

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

DANNY C. MCNULTY,

Plaintiff,

v.

CIVIL ACTION NO. 5:09-cv-00852

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

MEMORANDUM OPINION AND ORDER

The Court has reviewed the Defendant's Motion to Remand [Docket 9] filed by counsel, Kelly R. Curry, Assistant United States Attorney for the Southern District of West Virginia, on behalf of the Defendant, Michael J. Astrue, Commissioner of Social Security. In said motion, the Defendant moves the Court to remand this case to the Commissioner pursuant to the provisions of the fourth sentence of 42 U.S.C. § 405(g). The Defendant asserts that "this case would benefit by further administrative development." (Docket 9 at ¶ 2). The Defendant further states that Plaintiff's counsel has no objection to the motion. (*Id.* at ¶ 3).

By Standing Order entered August 1, 2006, and filed in this case on July 28, 2009, this action was referred to United States Magistrate Judge R. Clarke VanDervort for submission of Proposed Findings and Recommendation (PF&R). Magistrate Judge VanDervort filed his PF&R [Docket 10] on March 8, 2010. In his PF&R, Magistrate Judge VanDervort found that remand was appropriate, and strongly suggested that, in the future, Defendant "include an explanation of what evidence, or


inferences drawn therefrom, were relied on in arriving at” his decision, pursuant to the requirements of *Cook v. Heckler*, 783 F.2d 1168, 1172 (4th Cir. 1986). Magistrate Judge VanDervort further recommended that the undersigned grant the Defendant’s Motion for Remand, reverse or vacate the decision of the Commissioner, and remand Plaintiff’s case to the Commissioner of Social Security pursuant to the fourth sentence of 42 U.S.C. § 405(g) for further proceedings as envisioned by the Defendant in his Motion to Remand.

The Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of de novo review and the Petitioner’s right to appeal this Court’s Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir.1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). In addition, this Court need not conduct a de novo review when a party “makes general and conclusory objections that do not direct the Court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections to the PF&R in this case were due on March 25, 2010. To date, no objections have been filed.

Accordingly, the Court **ADOPTS** the PF&R [Docket 10] and **ORDERS** that the Defendant’s Motion for Remand [Docket 9] is **GRANTED**, the decision of the Commissioner is **REVERSED**, and the Plaintiff’s case is **REMANDED** to the Commissioner of Social Security pursuant to the fourth Sentence of 42 U.S.C. § 405(g) for further proceedings. The Court further **ORDERS** that this matter be **DISMISSED** from the docket of the court. The undersigned reminds Defendant to follow the requirements of *Cook* in future cases.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: March 26, 2010



IRENE C. BERGER, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA